IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.246 OF 2006

M.Z. Rehman .. Appellant.

V/s.

The Commissioner of Income Tax,
Mumbai City - XII, Mumbai .. Respondent.

Mr.Chirag Balsara with Mr.Jitendra Jain i/by Negandhi Shah & Himayatullah for the appellant.

Mr.A.M. Kotangale for the respondent.

CORAM : H,L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 5TH SEPTEMBER, 2006.

P.C. :

1. Heard Mr.Balsara with Mr.Jain for the appellant. Mr.Kotangale appears for the respondent.

2. This appeal seeks to challenge the order passed by the Income Tax Appellate Tribunal dated 24th March, 2005 in Income Tax Appeal No.3439 of 1996 filed by the appellant herein concerning assessment year 1992-93. The appeal was filed against the order of the Commissioner of Income Tax (Appeals) which confirmed the disallowance of Rs.10,26,638/-. The case of the appellant was that, that amount had been paid to some 10 sub-brokers and should have been permitted as business

expenditure. It was also the appellants case that 8 of those sub-brokers were not related to the appellant and that those sub-brokers had disclosed the brokerage as their income in their returns.

3. Mr.Balsara, learned counsel appearing for the appellant submits that all these submissions were taken before the Tribunal and an affidavit of the Chartered Accountant who appeared for the appellant has also been filed to submit that the plea was specifically raised. We have perused the order of the Tribunal. What the Tribunal has done is to reproduce the relevant paragraphs of the order of the Commissioner of Income Tax (Appeals). There is no discussion on the submissions raised by the appellant before the Tribunal.

4. Mr.Kotangale appearing for the respondent submits that this plea is after thought on the part of the appellant - assessee and that the original plea was different one. Be that as it may, what is expected is that when certain submissions have been made before the Tribunal, the Tribunal should deal with them and decide them on merits. In the present case, the Tribunal does not appear to have done that.

5. It is only for this limited purpose that we have interfere with the impugned order and restore the appeal

to the file of the Tribunal. The Tribunal is expected to hear and decide the questions which were raised before the Tribunal in the appeal which came to be dismissed by the impugned order.

6. The appeal is allowed in aforesaid terms. No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)